# City of Lafayette Staff Report

| | |
|---|---|
| **For:** | City Council |
| **By:** | Mala Subramanian |
| | Niroop K. Srivatsa |
| **Date Written:** | February 19, 2008 |
| **Meeting Date:** | February 25, 2008 |
| **Subject:** | **Town Center Phase III: Proposed changes to the Settlement Agreement between the City of Lafayette and Lafayette Residential Partners** |

---

**Purpose**

To review and approve a list of proposed changes to the Settlement Agreement between the City of Lafayette and Lafayette Residential Partners (LRP).

**Phase III History**

In 1998, the Lafayette City Council entered into a development agreement with Lafayette Town Center Associates to redevelop a 4.84-acre property in the downtown core. As part of the agreement, the Council rezoned the property to P1 (planned development) and approved a mixed use development consisting of three phases – commercial, multi family residential and office. Phases I and II were built and occupied shortly thereafter. The third and final phase, approved for a 26,000 square foot office building, is as yet undeveloped.

In 2003, the applicant, now called Lafayette Residential Partners, LLC, submitted an application for a 73-unit apartment project in place of the approved office building in Phase III. While the City indicated that it supported the change in use from office to multi-family residential, the proposed application was considered by the Planning Commission and found to be inconsistent with the BART Block Specific Plan. That application has since been withdrawn.

In 2005, the property owner entered into a contract to sell Phase III to KB Home South Bay, Inc. KB Home's proposal contained 76-unit luxury condominium units, five live/work units, a 3,000 square-foot restaurant and at least two levels of underground parking. However, in early 2006, KB Home terminated its contract to purchase the property.

In May 2006, the applicant and the City entered into a Settlement Agreement to resolve a dispute related to the Development Agreement, which required the City to amend the Development Agreement to include a luxury condominium component with affordable housing as further defined in the Settlement Agreement.

In January 2007, the City engaged the services of Libby Seifel, a certified planner with experience in real estate economics and urban development to assist the City and property owners in understanding the trade offs between an office project and a residential project. Ms Seifel stated that if the parties wanted a residential use on the subject site, the standards and criteria set forth in the Settlement Agreement made



8B2

such a use cost prohibitive. She recommended that the parties work together to come up with a way to make a residential project a reality.

In March 2007, the applicant received approval of the final development plans for the office building from the Planning Commission. An application for a building permit to construct the office building was filed and approved subject to payment of City fees.

In July 2007, the City Council reviewed changes to the Settlement Agreement and provided direction to the Council subcommittee (Anderson, Federighi), specifically regarding the application review process and the deal points contained in Exhibit A of the Settlement Agreement. Over the last several months, Mayor Anderson and Councilmember Federighi have met with Rick Dishnica and Ivan Glover, owners of Phase III of the Town Center development, to negotiate the terms of a revised agreement. As a result of these discussions and negotiations, the attached Settlement Agreement has been drafted for the City Council's consideration and approval.

**Amendments to the Settlement Agreement**

Following are some of the key changes to the Settlement Agreement:

*Process*
In July 2007, the City Council indicated that it was not comfortable with the aggressive timetable that the applicant had proposed to obtain project approval. Section 6 of the attached agreement calls for an initial joint meeting of the Council, Planning Commission and Design Review Commission wherein LRP will receive preliminary comments regarding the potential preliminary approval or disapproval of the project. Based on the feedback received, LRP may file an application with the City and the application will be reviewed by the Design Review and Planning Commissions before final action is taken by the City Council. The agreement establishes deadlines by which each of these bodies must act on the application.

*Deal Points*
Sections 4 and 6 contain the following deal points:

1. An extension of the Development Agreement for 2 years, which shall include the residential condominium use. (Section 4A-B)

2. LRP will pay the following specific fees (Section 4C)

   a. A public art fee consistent with the City's public art ordinance.

   b. A contribution of $100,000 for off-site improvements earmarked for the BART pathway/project intersection. The City will make a good faith application for grant monies with which to complete these off-site improvements. Any funds by the City will reduce LRP's contribution in an amount equal to five (5) percent of the total grant amount. (This addresses comments made at the July meeting)

   c. A contribution of $50,000 for a traffic signal at the intersection of Dewing and Mt. Diablo Blvd.

3. The City will provide credit for the very low-income housing units already in place at the Town Center apartments, recognizing that developer will still be required to meet all State and local affordable housing requirements. (Section 4E)

4. The City is willing to remove the requirement for a restaurant provided that an acceptable open space substitute is proposed that meets City parking requirements. In addition, there shall be no requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the 5evelopment that meets City aesthetic requirements. (Section 4F)

5. LRP shall retain Heller Manus Architects to produce conceptual plans for the residential condominium project which will retain the general footprint, general elevations, general site plan and general plaza dimensions of the earlier proposal. The plan will provide a feasible design for a naturally ventilated parking garage that meets City aesthetic requirements and that responds to the need to enliven the southern edge of the development. However, nothing shall prevent LRP from substituting an underground garage instead of a naturally ventilated garage. (Section 6)

6. The City may consider fees or exactions in addition to those listed in the Settlement Agreement that are designed to mitigate an environmental impact, as determined by the CEQA process. (Section 6)

**Staff Comments**

The Council subcommittee and staff recommend approval of the amended Settlement Agreement. While the approved plans for Phase III call for a 26,000 square foot office building, both the City and the property owners agree that a high density residential use is more desirable given the site's location in the Downtown Core and its proximity to the BART station. We believe that the changes that have been negotiated by the subcommittee will enable and facilitate the construction of a high quality multi family residential development in Phase III.

**Recommendation**

Approve the Amended and Restated Settlement Agreement.

Attachments

1. Amended and Restated Settlement Agreement
2. Minutes of the July 9, 2007 Council meeting

**AMENDED AND RESTATED**
**SETTLEMENT AGREEMENT**

THIS AMENDED AND RESTATED SETTLEMENT AGREEMENT, (Restated Settlement Agreement) is made as of this __ day of _____, 2008, (the effective date) by and between the City of Lafayette, a California Municipal Corporation (Lafayette) and Lafayette Residential Partners, LLC, a Delaware Limited Liability Company (LRP).

**RECITALS**

A. Lafayette and Lafayette Town Center Associates, a California Limited Partnership entered into that certain Development Agreement dated June 1, 1998 effective as of May 27, 1998, recorded as Document Number 98-0153218-00 (Development Agreement).

B. The Development Agreement provides for the development of certain property in Lafayette as a mixed-use development comprised of three phased components, retail, apartment, and office. (Project)

C. Section 7.06 permits the Developer to assign an interest in the Project subject to the Development Agreement upon receiving City consent unless the transfer is expressly exempt.

D. Lafayette Town Center Associates, after providing notice to Lafayette, transferred its interest in the apartment and office components to Bay Glen as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.

E. Bay Glen, after providing notice to Lafayette, transferred its interest in the office component to LRP as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.

F. Lafayette, Christopoulos Properties, and C & H Development Co., as Successors in Interest to Lafayette Town Center Associates, entered into an Assumption Agreement dated September 17, 1998, whereby Lafayette consented to the transfer of the retail parcel and Christopoulos Properties and C & H Development Co assumed all of the duties and obligations of Lafayette Town Center Associates as those obligations relate to the retail parcel.

G. Christopoulos Properties and C & H Development Co., after providing notice to Lafayette, transferred their interest in the retail component to Christopoulos as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.

H. The Development Agreement was originally to have expired within seven years after its effective date. On or about September 13, 2004, the parties to the Development Agreement executed a First Amendment thereto pursuant to which the term thereof was extended by one year and consent to the transfer of the retail parcel to Christopoulos was confirmed ("First Amendment"). By the date of the First Amendment, the retail component had been fully developed as well as the residential component consisting of an apartment complex owned by Bay Glen, affiliated with LRP. Only the office component remains undeveloped and it is still owned by LRP. LRP retained vehicular and pedestrian access to the real property on which the office component was and is to be constructed and concerning which the potential condominium project as hereinafter described may be located. (Phase III Site)

I. In or about January 2005, Lafayette and LRP engaged in discussions regarding the development of Phase III of the Project as a residential luxury condominium development rather than an office project. By that time, Lafayette had created a set of guidelines pursuant to which a luxury condominium project might be constructed on the Phase III Site in lieu of an office project. By that same time, LRP had negotiated a Purchase and Sale Agreement, as Seller, with KB Home South Bay, Inc., (KB) an affiliate of KB Home, as Buyer. In or about July 2005, LRP filed a request for consent to transfer its interest in the Development Agreement and the Phase III Site to KB. Lafayette denied the consent to transfer at a Council meeting held October 11, 2005.

J. On or about January 25, 2006, Lafayette and LRP participated in a mediation of certain disputes between them arising from and related to the Development Agreement. The crux of the disputes was the City Council decision made October 11, 2005 to deny the consent to transfer the Development Agreement and Phase III Site from LRP to KB. At that mediation, it was the contention of LRP that Lafayette's denial of the consent to transfer had caused it damages of at least $1 million. It was the contention of Lafayette that it acted in accordance with the Development Agreement to deny the consent to transfer. At the mediation, the parties reached a conceptual settlement agreement based on their mutual and reciprocal desire to settle and resolve all of the differences and disputes then existing between them.

K. On May 22, 2006 the parties entered into a Settlement Agreement to settle and resolve disputes related to the Development Agreement.

L. On April 9, 2007 the parties entered into a First Amendment to the Settlement Agreement to provide for LRP's release of claims and specify the City's remaining obligations.

M. From Fall 2006 through May, 2007, LRP processed and obtained final approval for the Phase III Site office building originally contemplated under the Development Agreement. Final approval thereof was granted by Lafayette and LRP has finalized its working drawings upon which building permits for the office project might be constructed.

N. In or about February 2007, Lafayette's City Council conducted a noticed public hearing during which a consultant retained by the City, Council Members and LRP revisited the potential for a residential condominium project alternative to the office project then pending. The City's consultant determined that the luxury condominium project contemplated in the Settlement Agreement lacked economic viability. Concurrently, the Council indicated that it would consider a further amendment of the Development Agreement to extend its expiration date by a further year so that Lafayette and LRP might consider a mutually acceptable residential condominium project alternative to the approved office component for the Phase III Site. In May 2007, Lafayette extended the expiration date of the Development Agreement to and including May 27, 2008; concurrently, LRP has proposed to finalize its office project for the Phase III Site, but to defer the issuance of building permits and the commencement of construction for such project pending this Restated Settlement Agreement and the resulting process for consideration of an economically viable residential alternative.

O. By this Amended and Restated Settlement Agreement, subject to ratification by Lafayette's City Council and to the Amendment of the Development Agreement as well as such other and related agreements, ordinances, and general and/or

specific plan(s) as may be required to effectuate the goals of the parties as herein set forth, the parties jointly propose to proceed through the development process described below to determine whether or not development of a residential condominium project can be an acceptable alternative to the current approved Phase III Site office project.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including, without limitation, the avoidance of the costs and risks of litigation and/or arbitration, and the mutual covenants and conditions set forth in this Restated Settlement Agreement the parties hereto hereby agree as follows:

1. **Truth of Recitals**:

The parties agree that the foregoing Recitals are true and correct and are incorporated herein by this reference.

2. **Term.**

The term of this Restated Settlement Agreement shall commence upon the Effective Date and shall remain in effect until May 27, 2010 unless terminated, modified, or extended by circumstances set forth by this Restated Settlement Agreement or by mutual consent of the Parties.

3. **Submittal of Amendment(s) of the Development Agreement**:

If and to the extent required, to give effect to this Restated Settlement Agreement, Lafayette agrees that it will accept, in good faith, for processing, review, and prompt action as reasonably possible, amendments to the Phase III Site Development Agreement to accomplish the purposes herein set forth. The parties acknowledge that the process for Amendment of the Development Agreement requires a noticed public hearing before the Planning Commission and City Council pursuant to Government Code section 68564 et seq. The effectiveness of this Restated Settlement Agreement shall be conditioned expressly upon the Amendment of the Development Agreement to provide to LRP the rights and benefits for which it has negotiated all as hereafter set forth, should such Amendment be required.

The parties acknowledge that the potential Amendment of the Development Agreement as well as this Restated Settlement Agreement pertain solely to Phase III of the Project. Accordingly, the Amendment of the Development Agreement shall have no bearing on the Phase I and or II Components nor shall the current owners of the parcels comprising said phases of the Project be parties to any such Amendment. Nothing herein contained, therefore, shall be deemed to alter or affect the rights, title, and/or interest of any owners or tenants of Phase I and Phase II of the Project.

4. **Amendment of Development Agreement.** LRP requests amendment(s) of the Development Agreement in the following particulars:

A. Use. An amendment to the Development Agreement that the permitted use of the Phase III Site office component may be either: (i) an office use as originally contemplated in the Development Agreement or (ii) a residential use in the form of a condominium project as further

defined in this Section 4. The election regarding permitted use shall be made by the Developer of the Phase III Site; should the designated permitted use remain as office, then the terms and provisions of the Development Agreement as they existed prior to this Restated Settlement Agreement shall remain in full force and effect save and except with respect to the provisions of this Restated Settlement Agreement regarding extension of the term thereof. In the event the Developer designates the Phase III Site as a Condominium Project permitted use, then all of the terms and provisions of this Restated Settlement Agreement shall apply as to that permitted use as that Phase III Site is developed by and under the terms of the Development Agreement as herein amended. The Condominium Project shall be subject to Lafayette's standard approval process save and except as modified by the Development Agreement and this Restated Settlement Agreement.

B. Term. An amendment to the Development Agreement that extends the term for no more than two additional years following execution of the Settlement Agreement. The current term of the Development Agreement will expire May 27, 2008 unless extended in accordance with the terms thereof. The parties contemplate, however, that pursuit of a residential project alternative may require a further extension of the current expiration date. The purpose of such extension would be both to secure LRP's rights to proceed with its office project without having to obtain building permits and commence construction and to pursue the residential project alternative to and through project approvals. Potential preliminary approval may include the following aspects/attributes of a residential project alternative: Site plan including public spaces, uses, parking structure/solution, height, mass, and number of units.

C. Fees and Exactions. An amendment to the Development Agreement to provide that the fees payable to Lafayette as otherwise required there under shall be payable at the rate in existence at the time a project application is actually filed in the event the Developer elects to pursue the residential project alternative. (In the event the Developer elects to pursue its existing approved office project, then fees shall be payable as set forth in the Development Agreement prior to any Amendment as herein contemplated.) An amendment to the Development Agreement to include the following specific fees which may be charged by Lafayette in the event LRP determines to pursue a residential project alternative to the currently approved Phase III Site office project:

(a) Such "art fee" as Lafayette may impose as of the date of this Restated Settlement Agreement on projects of the sort and scale of proposed residential development on the Phase III Site;
(b) A contribution to off-site improvements ear marked for the BART pathway/project intersection in a sum not to exceed $100,000; provided, however, any monies so paid shall in fact be allocated to and expended for such purpose in accordance with plans and specifications reasonably approved by LRP. Additionally, the City shall make good faith application for grant monies with which to complete the subject off-site improvements and any monies obtained in such fashion shall reduce LRP's contribution in an amount equal to five (5) percent of the total grant amount. LRP shall not receive any monies in excess of its contribution, in the event five (5) percent of the total grant amount exceeds LRP's contribution.
(c) A contribution in a sum not to exceed $50,000 for a traffic signal at the intersection of Dewing and Mt. Diablo Blvd. (The amount of contribution, if any, shall be based strictly on the incremental increase of traffic, if any, generated by the proposed residential condominium project alternative over that related to the office project.

The foregoing specific fee provisions shall have no application in the event LRP elects to construct its approved office project. The terms and provisions of Section 3.09 of the Development Agreement shall be applicable and given effect in the event a residential alternative project is undertaken save and except with respect to the specific fees set forth in this subsection.

Any and all fees payable in accordance with this paragraph shall be paid concurrently with the issuance of building permits.

D. Applicable Laws. An amendment to the Development Agreement to provide that, in the event the Developer pursues the condominium project alternative, Lafayette's building ordinances in existence as of the Effective Date of this Restated Settlement Agreement shall be applicable. The parties acknowledge that a Specific Plan Amendment to the BART Block Specific Plan shall be required to develop a residential condominium project alternative. LRP shall file an application for amendment of the BART Block Specific Plan and Lafayette shall thereafter process the same as necessary to accommodate the planned residential development so long as the potential preliminary approval of said project is indicated following the joint meeting of the Council and subsidiary commissions all as set forth hereafter. The amendment of the Specific Plan shall be with respect to permissible building height. In no case shall the height of the buildings exceed the height of the existing Town Center buildings. (For purposes of this paragraph, the height limitation imposed by the existing Phase II project shall be determined by project height above sea level rather than existing grade.) Save and except with respect to the BART Block Specific Plan Amendment and the provisions of this Restated Settlement Agreement, the applicable laws in effect at the time of execution of the Development Agreement shall apply to the project alternative residential development.

E. Affordable Housing Requirements. An amendment to the Development Agreement to provide the following affordable housing requirements shall be imposed as to the residential project alternative. LRP may provide affordable housing either on site or off site. California Redevelopment Law imposes a 15% affordable housing requirement of which 6% of units are to be allocated for very low income households and 9% of units allocated to low or moderate income households. (The aforesaid state law also imposes certain requirements regarding affordable units for qualified households at very low income, low or moderate income for not less than 55 years for rental units and 45 years for owner-occupied units.) The Developer may elect to meet affordable housing requirements through the provision of off-site units and, in such case, the requirement shall be 15% of the aggregate number of units constructed as required by California Redevelopment Law with 6% thereof allocated to very low and 9% to moderate income units. The election to provide affordable housing either on site or off site shall be that of the Developer with requirements imposed on said election to be made as herein set forth. (Affordable units shall be provided in configurations of one bedroom or two-bedroom units in the same proportion as market rate units comprising the Project.)

Should LRP propose to provide affordable housing on site, requirements related to the number and type of affordable units shall be calculated in a fashion which includes the affordable housing units presently in place at the Phase II Residential Rental Project.

The Phase II Project currently has in place 15 very low income units. That allocation of affordable units exceeds the requirement for very low income households by 10 units and exceeds the overall affordability requirement by 3 units. If it is assumed that Phase III will

consist of 75 units, then the aggregate affordable unit requirement for Phases II and III (comprising 150 units) would be 23. Since the very low income household unit requirement for Phase II already exceeds the entire very low income requirement for Phases II and III together, there shall be no requirement for additional very low income household units. In order to satisfy affordability requirements based on a combined 150 unit count between Phases II and III, the remaining shortfall in affordable units (8) shall be constructed as a part of Phase III and shall be allocated to moderate income households. (The foregoing calculation is illustrative only as the number of units comprising the Phase III alternative has yet to be determined. Therefore, affordability requirements shall be calculated with respect the aggregate number of units comprising both Phases II and III with credit given for excess Phase II units against requirements otherwise applicable to Phase III.)

In the event LRP elects to provide affordable housing off site, then the 15% affordable housing requirement of California Redevelopment Law shall apply and the Developer shall provide 6% of the units for very low income households and 9% of the units for low or moderate income households.) (By way of example, should the project be composed of 80 units, affordable housing requirements shall be satisfied by means of a credit of four (4) very low units; the provision of four (4) very low units and the provision of four (4) moderate for a total of eight (8) new affordable units.)

The terms "very low income households" "low" and "moderate income" shall have the same meanings as set forth in California Health Safety Code and Section 50052.5 as that section may be amended from time to time and shall provide an allowance for utilities and maintenance costs established by the State of California Department of House and Community Development, plus the actual homeowners association fees, dues and assessments as established from time to time. "Area median income" as referenced in California Health and Safety Code Section 50052.5 shall mean the area median income for Contra Costa County, California. as permissibly adjusted for family size appropriate for the unit by the State of California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the US Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and California Health and Safety Code Section 50093.

F. Attributes of a Residential Condominium Project Alternative. An amendment to the Development Agreement to include the following conceptual summary of the attributes of a residential condominium project the parties jointly find to be an acceptable use:

a. The architectural firm Heller-Manus has previously conducted conceptual studies of the Phase III project site for development of a residential condominium project. LRP shall retain Heller-Manus to produce plans acceptable to it intended to create an economically viable development project; provided, however, the general foot print, general elevations, general site plan and general plaza dimensions of the original Heller-Manus work product shall be retained. (The parties acknowledge that the foregoing does not directly address building height; the height limitations applicable to the project shall be as defined in Section 4D above.)

b. There shall be no restaurant use requirement imposed by Lafayette as to the project, provided that an acceptable open space substitute (e.g., enlarged plaza, children's fountain/playground/spray ground, sculpture park) or, alternatively, a public or quasi-public interior space substitute (e.g., art gallery, chamber of commerce office, non-profit foundation) is proposed that meets City parking

requirements. In addition, there shall be no requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the development that meets City aesthetic requirements. LRP shall apply for a Land Use Permit to define the specific acceptable open space substitute or public or quasi public interior space substitute for the prior required restaurant use. The issuance of a Land Use Permit shall be a condition precedent to use of the referenced space—but not to approval of the Project itself.

c. Exterior finishes and materials used on the buildings, the plaza, and the pedestrian pathway and the proposed landscaping shall be of the highest quality, shall respect and reflect the creek side setting of the project, and be commensurate with the single family and environmentally-sensitive quality of residential buildings in Lafayette. The City will require the extensive use of architectural features involving a variety of building materials including stone, brick, minimal use of smooth trowelled stucco, and wood for the exterior of the buildings. Other materials and finishes that are consistent with a high quality residential project may be offered by LRP as alternatives. Approval of such materials is at the discretion of the City.

d. All matters involving non-public spaces and portions of the project and/or individual units which are not viewable from off-site shall be matters determined by LRP at its sole and exclusive discretion. (The foregoing specifically includes all interior finishes, fixtures and amenities of every kind and sort.)

e. Parking requirements shall not exceed two spaces per unit and shall be otherwise limited to one space per bedroom. Parking requirements may be satisfied by tandem spaces and/or "lifts"; provided, however, such alternatives must be reviewed and approved by a qualified traffic engineer and the City's engineer to ensure feasibility. LRP shall provide parking as set forth above and shall also include replacement parking for any spaces lost in the retail parking lot in addition to required spaces pursuant to prior agreements (e.g. CC&Rs, Development Agreement etc).

5. **Loan Extension.**

The parties acknowledge that LRP is currently obligated to Lafayette in the principal sum of $458,524 plus interest pursuant to the terms of a certain Promissory Note executed May 31, 2005. The aforesaid indebtedness is presently due and payable on or before May 27, 2008 (save and except as the term thereof may be affected by the Development Agreement, and/or this Restated Settlement Agreement. An amendment of the term of the Development Agreement as set forth in Section 4B above shall automatically extend the maturity date of the referenced loan. Notwithstanding the foregoing, the above referenced Promissory Note shall be immediately due and payable on the earlier of: (1) termination of the Development Agreement or (2) the date of close of escrow for the sale of the Phase III Site to a third party.

6. **Approval Process:**

From and after the execution and/or ratification of this Restated Settlement Agreement, LRP shall retain Heller-Manus Architects to produce the conceptual/schematic plans required for approval of a residential condominium project. The aforesaid plans shall be based upon prior work product from that same firm previously reviewed by Lafayette in the context of the original

Settlement Agreement. The Heller-Manus revised work product prepared for the LRP residential project alternative shall:

Retain the general footprint, general elevations, general site plan and general plaza dimensions of the earlier proposal;

Create a housing development that is economically viable from the standpoint of LRP; and

Provide a feasible design for a naturally ventilated parking garage that meets City aesthetic requirements and that responds to the requirement to enliven the southern edge of the development all with access to or from Dewing/Mt. Diablo Blvd. Nothing herein contained shall be deemed to prohibit LRP from substituting an underground parking garage structure in the place and instead of a proposed naturally ventilated parking garage as described herein above.

As soon as such Heller-Manus plans are available and have been delivered to Lafayette, a joint meeting of the City Council, Planning Commission, and Design Review Commission shall be scheduled. The said joint meeting shall occur within 30 days of delivery of all plans and submittals required by the City. The plans shall be schematic and may include cut sheets to provide information regarding architectural details. The plans shall include elevations, site plan, a conceptual landscape plan, parking and circulation, proposed lighting, paving, furniture, art, colors and a materials board related to the building. At its joint workshop meeting, Lafayette shall make preliminary comments regarding the potential preliminary approval or disapproval of the Project utilizing such procedures for recording comments of each body. (Project Preliminary Comments).

If the Project Preliminary Comments indicate potential approval of the project, then Lafayette staff will produce submittal requirements for consideration by the Design Review Commission (DRC), Planning Commission and City Council. Submittal requirement shall include all CEQA compliance requirements; provided, however, the prior EIR Studies and Addenda shall be considered (including those related to an earlier proposed apartment project for the Phase III Site). Otherwise, submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments from Council Members and Commissioners.

Within 30 days of the date on which the LRP Application shall be deemed to have been complete and the appropriate CEQA analysis shall have been completed, the DRC shall consider the plans from the joint meeting and Project submittal requirement at a hearing. The scope of DRC review shall be to recommend approval, conditional approval, or rejection of the plans and submittals furnished by LRP. The DRC action shall be completed within 45 days of the first DRC meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the Application, including anything necessary for CEQA compliance.

The DRC's recommendation shall be forwarded to the Planning Commission as soon as possible, but no later than 30 days following DRC action. The Planning Commission shall take action on the LRP Application within 45 days of the first Planning Commission meeting on the Project, unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance.

The Planning Commission's recommendation shall be forwarded to the City Council as soon as possible. The City Council's action must be completed within 45 days of the first City Council meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance. Such review shall include a CEQA determination and action on the Tentative Subdivision Map.

The parties acknowledge that the City may consider fees or exactions in addition to those listed in Section 4(C), revised plans, or other measures not specified in this Agreement that are designed to mitigate an environmental impact, as determined by the CEQA process, and those measures shall not be considered to violate this Agreement. The parties acknowledge that CEQA may require that an addendum or other environmental review be prepared to address potential environmental impacts created by a Residential Project Alternative. It is acknowledged that LRP previously submitted an application for a Phase III Residential Project and that CEQA studies related thereto, as amended or supplemented, shall be reviewed and an addendum updating traffic and visual impacts may be used in the CEQA analysis of the Phase III Residential Project Alternative.

If final Project approval of the Phase III Residential Project Alternative is granted, and if LRP elects to pursue that Project, then the fees and exactions set forth in 4C above shall be paid as therein set forth.

7. **Elections Available to LRP**:

Notwithstanding anything to the contrary herein contained, LRP may elect to build its approved office development at the Phase III Site, in which case the terms and provisions of the Development Agreement save and except as to the term thereof shall remain unchanged and in full force and effect. In such instance, the Restated Settlement Agreement shall have no application to the office project (although the Development Agreement shall remain in force and effect.) Additionally, LRP retains the right to designate any Assignee as the proposed Assignee of the Development Agreement, as modified by this Restated Settlement Agreement, and the proposed purchaser of the Phase III Site real property. Should LRP propose to transfer its interest in the Development Agreement and the Phase III Site, then the provisions of Section 7.06 of the Development Agreement shall be applicable to any such proposed transfer and shall remain in full force and effect. The amendment of the Development Agreement by this Restated Settlement Agreement shall be given effect so long as a residential condominium project is proposed notwithstanding the assignment by LRP should such assignment be made.

8. **Acknowledgment of Effect of Prior Settlement Agreement**:

The parties acknowledge that the original Settlement Agreement dated May 22, 2006 as amended on April 9, 2007, has been given effect including, particularly, the general releases therein set forth. To the extent the Settlement Agreement has been amended and restated in this document, however, the terms and provisions hereof shall take precedence over and supersede like or other provisions found therein.

A. Release by LRP of Lafayette.

Except for the obligations set forth in this Restated Settlement Agreement, including those obligations imposed by and under the terms of the Development Agreement as it may be amended in a fashion consistent herewith, LRP, on behalf of itself and its agents, employees, representatives, officers, directors, managers, members, attorneys, insurers, corporate parents, subsidiaries, affiliates, owners, shareholders, partners, assigns, and predecessors and successors-in-interest (collectively, the "LRP Parties"), hereby irrevocably and forever releases, discharges, waives, relinquishes, settles, and forgives, all rights, interests, claims, liabilities, demands, damages, costs, attorneys' fees, disputes, obligations, charges, complaints, and causes of action of whatever kind or nature, whether known or unknown, whether absolute or contingent and whether based on contract, tort, statutory or other legal or equitable theory of recovery, which LRP and the LRP Parties may have or had against Lafayette, and Lafayette's respective agents, employees, representatives, officers, directors, managers, members, attorneys, insurers, corporate parents, subsidiaries, affiliates, owners, shareholders, partners, heirs, and spouses, assigns, and predecessors and successors-in-interest (collectively, "Lafayette Parties") arising from or related to the exposed assignment of rights under the Development Agreement and proposed sale of real property all as set forth in Paragraphs I, J, and O of the Recitals above ("Claims"). Notwithstanding the foregoing, nothing in this Paragraph shall be deemed to constitute a waiver or release of any of LRP's rights under this Restated Settlement Agreement or the Development Agreement other than such rights of actions as relate to the refusal of Lafayette to consent to transfer to KB all as set forth in its Resolution adopted October 11, 2005.

B. Release by Lafayette of LRP.

Except for the obligations set forth in this Restated Settlement Agreement, including those continuing obligations as may be imposed under the Development Agreement as it may be amended in a fashion consistent herewith, Lafayette, on behalf of itself and the Lafayette Parties, hereby irrevocable and forever releases, discharges, waives, relinquishes, settles and forgives, all rights, interests, claims, liabilities, demands, damages, costs, attorneys' fees, disputes, obligations, charges, complaints and causes of action of whatever kind of nature, whether known or unknown, whether absolute or contingent and whether based on contract, tort, statutory or other legal or equitable theory of recovery, which Lafayette and the Lafayette Parties may have or have had against LRP and the LRP Parties arising from and/or related to the disputes and maters set forth in Paragraphs I, J, O of the Recitals to this Restated Settlement Agreement. Notwithstanding the foregoing, nothing in this Paragraph should be deemed to be a waiver or release of Lafayette's rights under this Restated Settlement Agreement or the Development Agreement as it may be amended in a fashion consistent herewith.

C. Effect and Nature of Release.

The releases stated in Section 8A and B, above extend to all claims, liabilities, and obligations whether or not claimed or suspected by the parties to this Restated Settlement Agreement, and the releases constitute a waiver of each and all of the provisions of Section 1542 of the California Civil Code, which reads as follows:

> **"A general release does not extend to claims which the creditor does not now or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

The parties acknowledge that the effect and import of the provisions of Section 1542 have been explained to them by their own independent counsel or that such independent counsel

was available to each of them prior to the execution of this Restated Settlement Agreement. The parties further acknowledge that this waiver of rights under Section 1542 of the Civil Code has been separately bargained for and is an essential and material term of this Restated Settlement Agreement and that, without this waiver, the parties would not have entered into this Restated Settlement Agreement.

9. **Covenant by Parties Not to Sue**. Each party covenants and agrees that he, she or it shall not, directly or indirectly, bring, commence, initiate, institute, maintain or prosecute any action, suit or other proceeding of any kind or nature against a party to whom he or it has given a release, which is based, in whole or in part, on any claim or cause of action covered by the releases contained in this Restated Settlement Agreement that this Restated Settlement Agreement may be pleaded as a full and complete defense and bar to, and may be used as the basis for an injunction against, any action, suit or other proceedings which may be commenced initiated, instituted, prosecuted, maintained or otherwise threatened or attempted in breach or violation of the provisions of this Section. The provisions of this Section shall not apply to the breach or threatened breach of any of the covenants, agreements, duties, obligations, representations or warranties contained in this Restated Settlement Agreement.

10. **Warranties and Representations**. The parties and each of them warrant and represent that: They have authority to enter into this Restated Settlement Agreement and to amend the Development Agreement in a fashion consistent with this Restated Settlement Agreement and that neither has assigned to any third party any rights hereunder save and except as set forth in the Recitals hereto.

The parties expressly acknowledge that this Restated Settlement Agreement may only be given effect by action taken by the City Council to ratify and affirm the Restated Settlement Agreement in the fashion consistent herewith. Lafayette shall exercise its best efforts and due diligence to present this Restated Settlement Agreement and any proposed amendment to the Development Agreement which might be required to its City Council and to obtain the affirmative concurrence of its City Council to all of the terms and provisions herein set forth. This Restated Settlement Agreement shall be ratified by the City Council as soon as possible.

11. **Indemnification**. LRP shall defend, indemnify and hold Lafayette, its officials, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, judgments, awards, decrees, costs, expenses, liability, loss, damages or injuries, in low or equity, in any manner arising out of or in connection with the proposed amendment(s) to the Development Agreement and vehicular and pedestrian access to the property as described in greater detail in Recital H of this Restated Settlement Agreement, including, without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. LRP shall defend (using one attorney, to be reasonably approved by the City), at LRP's own costs, expenses and risk, any and all aforesaid suits, actions or other legal proceedings of every kind that may brought or instituted against Lafayette, its officials, officer, employees, agents or volunteers. LRP shall pay and satisfy any judgment, award or decree that may be rendered against Lafayette or its officials, officers employees, agent or volunteers, in any such suit, action or other legal proceeding. LRP shall reimburse Lafayette and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. This indemnification shall survive the expiration of this Restated Settlement Agreement.

12. **Covenant of Further Assurances**. Each party agrees to execute such other documents and perform such other acts as may be necessary or desirable in order to carry out the purposes of this Restated Settlement Agreement.

13. **Representation By Counsel**. Each party acknowledges that he, she or it has had the opportunity to seek advice of independent legal counsel in connection with this Restated Settlement Agreement and that he, she or it each understands the meaning of every term of this Restated Settlement Agreement and the consequences of signing this Restated Settlement Agreement.

14. **Agreement Entered Into With Independent Judgment**. Each party acknowledges that he, she or it has had the opportunity to seek advice of independent legal counsel in connection with this Restated Settlement Agreement and that he, she or it understands the meaning of every term of this Restated Settlement Agreement and the consequences of signing this Restated Settlement Agreement. Each party further declares and represents that he, she or it have reviewed this Restated Settlement Agreement in its entirety and that, in entering into this Restated Settlement Agreement, he, she or it relied wholly on his, her or its own respective judgment, belief, knowledge, investigation, independent legal advice and research and that he, she or it has not been influenced to any extent whatsoever in making this Restated Settlement Agreement by any representations or statements regarding the same by any other party or by any person or persons representing or acting for any other party.

15. **No Admission of Liability:** Neither the negotiation nor the execution nor the performance of this Restated Settlement Agreement by any party shall constitute an admission or concession of liability or wrongdoing by any party nor any other form of admission with respect to any matter or dispute whatsoever and any such liability or wrongdoing is expressly denied.

16. **Attorneys' Fees and Costs**. The parties agree to each bear their own attorneys' fees and costs in connection with the Action and this Restated Settlement Agreement. The parties further agree that the prevailing party in any action or proceeding to enforce or interpret this Restated Settlement Agreement shall be entitled to recover from the other parties its actual attorneys' fees and costs in connection with that action or proceeding.

17. **Entire Agreement**. This Restated Settlement Agreement constitutes the entire agreement between the parties concerning the matters set forth in this Recitals except as otherwise set forth herein, supersedes all prior or contemporaneous agreements, understandings, and proposals. This Restated Settlement Agreement may be modified only by a written instrument executed by both parties.

18. **Counterparts**. This Restated Settlement Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

19. **Governing Law**. This Restated Settlement Agreement will be governed by and construed in accordance with the laws of the State of California.

**IN WITNESS WHEREOF**, the parties each have executed this Restated Settlement Agreement as of the day and year first above set forth.

**LAFAYETTE RESIDENTIAL PARTNERS, LLC, a Delaware Limited Liability Company**

By: _____

By: _____

**CITY OF LAFAYETTE, A CALIFORNIA MUNICIPAL CORPORATION**

By: _____

the priority items would be a bike path route plan through downtown getting away from congestion and some signage to alert motorists to share the road which he felt were relatively small budget items. He wanted the Council to have a similar sense of urgency, to balance all factors and ensure the plan gets implemented in a more timely fashion.

Mayor Federighi said the Council normally would take a recommendation like this from BPAC which would go through Circulation Commission, and then would come as a recommendation to the Council and she suggested BPAC doing this.

Councilmember Anduri asked what the delay was on implementing the items. Transportation Planner Leah Greenblat said the City received TDA funds to implement some of the high priority bike routes in town and with that grant staff has a certain window to spend funds. Initially, in talking with the City Engineer, staff felt it could implement the signing and striping starting in the fall and working into the spring. However, at the time of the last BPAC meeting, the Council was considering whether or not to put some additional funding towards resurfacing different roadways. If that work went ahead for the next CIP, the City Engineer would have to redirect engineering staff to work on that project as opposed to the signing and striping project. Vice Mayor Anderson confirmed there was funding for the work, but it was a matter of staffing the project.

Commissioner Hiden felt what BPAC Member Allan was talking about was funding for the feasibility study. She said the EBMUD aqueduct pathway must have a feasibility study and funding must be sought first.

Chair Sevilla noted she raises guide dog puppies and is involved with the blind. When the Circulation Commission makes recommendations or at any time the Council is making decisions on traffic signals in walkways or traffic calming projects, she asked the Council to keep in mind the disabled, children, elderly and the blind on any decision-making. Referring to an earlier review of Lafayette's Downtown relative to accessibility issues, Councilmember Tatzin noted there were many signs and street furniture along walkways, agreed some suggestions were ignored, but suggested the suggestions be passed on into the strategic plan process.

**7. OLD BUSINESS**

**A. Niroop Srivatsa, Planning and Building Services Manager**
**Town Center Phase III: Review of the list of proposed changes to the Settlement Agreement between the City of Lafayette and Lafayette Residential Partners**
Recommendation: Direct staff to prepare a Settlement Agreement for consideration at the August 13th meeting.

Planning and Building Services Manager Niroop Srivatsa said over the last several months, the Mayor and Vice Mayor have met with Rick Dishnica and Ivan Glover of Lafayette Residential Partners (LRP) to explore ways to make a residential development a reality in Phase III of the Town Center. A few months ago, consultant and real estate economist Libby Seifel researched this option and at a meeting gave some direction on what the City and Developer could do to make a residential project a reality.

As a result of those discussions and negotiations, Mayor Federighi and Vice Mayor Anderson and LRP drafted a list of deal points which were attached to the staff report and could be broken down into two components; 1) processing of an application for a multi-family project; and 2) changes to Exhibit A to the settlement agreement which was entered into in 2006.

Since the packet went out, comments have been received by LRP's Attorney, David Bowie, and in reviewing comments, staff has concerns about changes proposed, particularly in the realm of timing in processing an application, the development impact and processing fees that will be imposed on the project, the status of the development agreement and how it will be folded into the process and she has conveyed those comments to Rick Dishnica.

Additionally, this afternoon staff received a draft settlement agreement as amended by Mr. Bowie and staff has not reviewed or commented on the amendment, and staff plans to meet with LRP tomorrow to discuss the unresolved issues of timing, processing, fees, the development agreement and other items in the amended settlement agreement.

Therefore, staff is asking for Council direction regarding the core changes to the settlement agreement as outlined in Exhibit A and she walked the Council through the revised settlement agreement deal points that the City drafted, compare it with Exhibit A and also with Mr. Bowie's comments which were received after the Council packet went out.

She said the first bullet point is rather general in nature; it states the Council will act on an amended settlement agreement first if all parties can agree to the deal points before LRP expends time and money in hiring Heller-Manus to develop plans. Mr. Bowie's changes have some tight deadlines, and timing will be reviewed tomorrow with LRP.

Staff is looking for direction on bullet item 2, which states that once the settlement agreement is acted on the developer will hire Heller-Manus to come up with a housing development plan which retains the general footprint, site plan, elevations and plaza dimensions of the original Heller-Manus proposal that the Council viewed in 2005 which had the preliminary support of the Council, the Planning Commission and the Design Review Commission.

Once that plan is produced, then the City will hold a joint meeting to review the details of that plan. Again, she asked that the timeline be set aside; what LRP is looking for at this stage some initial feedback on the Heller-Manus plan.

Then, the process itself will involve, once the entire DRC, Council and Planning Commission joint meeting is held, review first by the DRC, then at a joint meeting or meetings by the Planning Commission and City Council. She said joint meetings are proposed due to the need to expedite review.

The changes made to Exhibit A of the settlement agreement have to do with the uses as are found in Exhibit A, which is a change from office use to a high quality mixed use project. The revised deal points say 1) the City will remove a requirement for a restaurant, provided that the developer substitutes that use with an acceptable open space substitute, a public or quasi-public use; 2) that the City will no longer require the 5 live/work units along the southern elevation with the developer, provided that LRP proposes an acceptable alternative that enlivens that southern end; 3) that the City will remove all conditions relating to the interior quality and finishes of the condominium units; 4) (reflected in Exhibit A under Housing Units, page 3, Item 5) LRP will be given a credit of 4 very low income units from Phase II of the Lafayette Town Center. LRP has provided 20% of the units in Phase II as affordable rather than the required 15% and they have asked for credit for the 4 excess very low income units, which the settlement agreement already agreed to.

Councilmember Tatzin questioned if there was any change to Exhibit A, and Ms. Srivatsa said the deal points really spoke to the narrow issue of providing credit to the 4 units. Staff did not go beyond to say that the remaining units would be 50% very low, etc.

Vice Mayor Anderson felt the key is that there was a concern that there were more very low units being required in the original deal points of Exhibit A, and that the City count those that are already in place and link the two projects as one, which would actually reveal enough very low income units already in place to allow the developer to only propose low or moderate income units to meet the goals.

Ms. Srivatsa said she stood corrected. She continued with the next change; 5) that parking will be provided at a rate of 1 space per bedroom to a maximum of 2 spaces per unit. Councilmember Tatzin questioned whether there was an additional requirement for guest parking in the original or the revised agreement. Vice Mayor Anderson said they had originally proposed 1 space per bedroom and they capped it at 2 spaces, which is the difference and confirmed there was no provision for guest spaces.

Regarding fees, Ms. Srivatsa said LRP has agreed to contribute $100,000 for improving the BART station handicapped access ramp and walkway connection. If the City is successful in receiving grants, those funds will be used to offset the $100,000 that LRP provides. The settlement agreement called for $50,000 to contribute towards a signal at Mt. Diablo Boulevard and Dewing Avenue. The Change is that LRP will first work towards getting access to the BART Park N Ride lot behind the project. If successful with the City's assistance, the developer will not be required to contribute toward the cost of the signal at Dewing. If unsuccessful, the developer will contribute towards the cost of the signal, but only based on the incremental increase in traffic generated from the residential project as against the approved office building.

Councilmember Tatzin confirmed with Ms. Srivatsa that the office building approval provided no contributions for the signal. He said years ago when Peter Bedford proposed access off the EBMUD/BART aqueduct, the City did a traffic impact study at the Deer Hill/Happy Valley intersection and the Happy Valley/Mt. Diablo intersection, and he recalled it pushes to put a signal at Deer Hill and Happy Valley. So, he felt if this is looked at, one cannot just assume there are no impacts to that traffic. Ms. Srivatsa said environmental analysis will need to be done and noted his comment into the record.

Ms. Srivatsa said those were the proposed changes to the existing settlement agreement and LRP is looking for direction on the core issues, with the understanding that processes, fees, the development agreement, CEQA, and all approvals necessarily will be worked out at meetings between the City and LRP starting tomorrow.

Mayor Federighi said the initial hope was to be able to get some process agreements at this point, but she was not sure the Council would be in this position tonight because of the changes to the deal points.

Councilmember Tatzin referred to the $100,000 contribution for the walkway at BART and said an access on the south side of the BART station would be over $1 million. If as an example, the City gets grant money for $200,000, he questioned if this paid for the project or would $100,000 go back to the developer. Vice Mayor Anderson said the concept was that the money would go back to the developer. Councilmember Tatzin felt that when staff writes its grant application and applies for $200,000 and $100,000 would go to a developer, he did not feel the chances of getting grant monies were slim. Ms. Srivatsa felt the City will need to come up with some

amount of matching funds somewhere to make the grant application more attractive. Councilmember Tatzin said he still felt the chances would still be lower in getting grant funds and it would not serve the developer either.

Regarding the removal of interior requirements for the condominiums, Councilmember Tatzin confirmed with staff that the exterior finishes would remain.

Councilmember Anduri referred to process and said in looking at what was just delivered to the Council, it is a substantial revision and he hoped there was no expectation that the Council would decide on it tonight. He asked if the Vice Mayor and Mayor would continue to negotiate, come back with a final agreement and then tonight what the Council would do is provide its comments.

Mayor Federighi welcomed comments on what was before the Council. In terms of how the process is dealt with, she said staff is meeting with LRP tomorrow morning to see if they can come to greater meeting of the minds in terms of process. She noted the City Attorney has some major concerns about timing and liability to meet the timelines. At best, she suggested the Council return with a revision that includes process at the next Council meeting.

Vice Mayor Anderson asked for comments by LRP in the changes received in the last few hours and voiced concern, as he felt they had something that was clear and straight-forward.

David Bowie, Attorney for LRP, said this has been a continuing process and hoped there would be a meeting of the minds at some point. As they went back and went over the deal points, there were some changes his clients felt were important and the bulk of changes have to do with processing issues. A meeting is scheduled tomorrow at 2:30 p.m. and they were intending to refine some of the issues. He drafted a completely amended settlement agreement that puts in concrete terms at least what they were completely prepared to deal with. Their concern is that they have been with the project for many years, his clients feel the need to bring it to a head and move on, hiring Heller-Manus and going through the approval process will represent once again a costly commitment. The further into the process, the more expense is incurred and if the project ultimately does not move forward, it will be money lost. Their principal intent is not to be a trap for the City but one that ensures that they know at an early stage whether or not they have a project that will be economically viable or not. Some of the comments made in fine-tuning the deal points were driven by the fact that at the last meeting in February, the end conclusion of the City's consultant was that the residual land value was a negative $9 million. So, the revisions are their effort to come up with something that will ultimately get them closer to something that will work. Neither side wants to waste time, they know they need to refine and revise the agreement, hopes to make progress tomorrow, and felt the question is how close can they get to it.

Vice Mayor Anderson said Mr. Bowie has not been involved with meetings with LRP which may have been a mistake, but based on these meetings, the City has have tried to move expeditiously to tonight to move forward. The problem is that it is now gummed up with technical details that unravel the entire process. His concern is one of faith and he does not see it happening in the same timeframe. They had the deal points worked out last week, they will try and work on what they can tonight, meet with staff, but he said he was sorry the opportunity was missed.

Mr. Bowie said his clients were very appreciative of the City's efforts, they do not want to undermine what was done, the feedback is extremely positive, but he did not feel his clients

would not have gone this far in the process if they did not feel there was a real responsiveness on the part of the Vice Mayor and Mayor. Unfortunately, this is a complicated and expensive process. They could have started out with a bare residential alternative, they played with the deal points, he was asked to make a few changes to it, and felt most changes related to process. If they take Council comments tonight, they would hope to get an agreement and move forward. Unfortunately, they are stuck with certain economic realities and it may not be possible to do what they all would like to see happen, but he remains hopeful.

Mayor Federighi said the major problem was one of tightening up the process portions, which have resulted in something staff has indicated will not work, given the timelines. Mr. Bowie felt the CEQA analysis has already been done, said there has been extensive work produce already available, while he understands the difficulties in scheduling and workloads of other projects, they all must deal with these issues and possibly a firm deadline of 60 days is not the right tempo, but he felt if they can all move together with one basic principle—that the longer this tends to pend the less economically viable the project becomes. So, it was in their joint interest to try and move forward as quickly as possible. Maybe his timelines will not work but they will listen to staff comments regarding this.

Councilmember Andersson referred to page 1 of the staff report and said when the meeting between the Council, Design Review and Planning Commission takes place; it states the plan will either be deemed acceptable or not acceptable. He asked what the mechanism for this was. Mayor Federighi said they did not go through the actual mechanics of it, it would be a joint meeting where they would have all three bodies meet, and if the members of all bodies concur that this is a supportive plan, it could be a thumbs up, but if not it would not go further. This was why the developers were concerned with wanting to have initially some idea of whether the deal points would be agreeable to.

Councilmember Andersson requested more definition of the process and how it would work.

Councilmember Tatzin said he broke the deal points into categories—requirements for removal of interior finishes, removal of the restaurant and live/work units and parking. He was comfortable with those, but he felt the applicant should provide some level of guest parking because the adjoining development does not have any. He also felt that as long as everyone meets the legal obligations under the various loan agreements that require low income units, he believes the proposal for the low income units was acceptable. He felt there should be more creativity with the $100,000 deal point because it might kill the grant, said Ms. Srivatsa might think otherwise, but he felt it would not score highly in the rankings. He was glad to see the exterior material requirements would remain.

Regarding Mr. Bowie's comments, Councilmember Tatzin said he first read the one with the staff report. He was concerned that if as if he had read it 20 years from now, it sounds like the City was negotiating with a gun to its head, and he felt the tone was not good. While he understands the applicant's concerns and it was to everyone's benefit to get it done rapidly, he offered caution in its tone because it makes the City feel like it was forced into the agreement. He noted the applicant can always withdraw because it has an office entitlement, but he suggested the subcommittee attend the Commission meetings to ensure the Design Review Committee and Planning Commission move forward in an expedited way. While he understands the intent, he was concerned this may be counter-productive given the tone of the process. He noted that it was not clear to him whether DRC actually would have to look at what he would consider a complete application, so it was hard to know what they can do because the City does

not know what they will get, nor do we know how far in advance they would get it. So, he felt timelines should be identified for everything.

His concern is that the original Town Center retail project, in that when they had joint meetings, we left the impression with the Design Review Commission and Planning Commission members that the City Council wanted them to approve it regardless of what their feelings about it were. When you have such joint meetings like this, it just reinforces this. He felt if the City has these commissions and ask them to do their job, the Council should allow them to do their job. He felt we should allow, after the initial joint meeting, the Planning Commission to meet independently and then have it come to the Council.

Mayor Federighi agreed with what is being said about separate meetings, but the idea was to work out some way to expedite things, but she made it clear that this had to be an opportunity for meaningful comment by both the Design Review and Planning Commissions and it was not going to be what the Council simply wanted.

Councilmember Anduri felt there was a dramatic difference between the consensus document and the new version received, especially about design review. The original consensus-agreed document says the design will be subsequently reviewed and amended by Design Review Commission. The new language says the scope of the Design Review Commission's review will be to recommend approval or rejection of the plans and submittal furnished by the developer. So, after the joint meeting with the Council, the Planning Commission and Design Review Commission, the developer can then tweak it, but all Design Review Commission can say is yes or no within 60 days and cannot ask for revisions, which he felt was substantially different. Councilmember Tatzin agreed and the effect of this is that it either causes the Design Review Commission to do nothing. He suggested staff and the applicants start their meeting tomorrow for content, tone, amendments to the settlement agreement, and hoped to get an update at the next July meeting.

Mayor Federighi asked for other Councilmembers comments on the major issues, such as removal of the restaurant, the live/work, affordable units, interior details and parking.

Councilmember Andersson felt there is a recognition that some requirements in an earlier agreement would not work--that taking the restaurant out solved a lot of problems. The economic issue and process issue on interior finishes was a reflection of economic reality and he did not have a problem with that.

Councilmember Anduri appreciates Mr. Dishnica and Mr. Glover's efforts in continuing negotiations and continuing to discuss the residential alternative, as he felt it was the best thing. However, he felt badly about receiving the revised deal points document. He agreed with Vice Mayor Anderson on each of the items, but hoped on the removal of the restaurant that something could be found to make the space a good addition to the community in terms of a reason for people to go there. He said the space is taking on an importance of what the community was looking for and needs something to draw people in there.

Rick Dishnica, LRP, felt Mr. Anduri's comment was interesting because it is the classic example of the "devil was in the details". He said it was clear that as you get into reading the various drafts, as you can read a lot into it. He said they were working in good faith to try and work something out, said it is an extremely complicated project with a lot of moving parts and what horrifies them is that they are embarking on the process again, has received some consultant costs, said the design development drawings would cost $280,000, creating the meeting

schedule would cost $55,000, landscape architect is $55,000, and they will be out of pocket close to $500,000. So, they are serious but very cautious about what they are about to do. They want to make sure the language is clear, that there is a meeting of the minds, and if each person reads something different into the intent, that it is clarified on the table. He said the details keep coming up as we get into it, said they held a meeting with the principles, discussed the deal points, and everyone felt it was not as clear as they wanted it to be. Today, he went through Mr. Bowie on exactly how the affordable housing item should be clarified to ensure there are no misunderstandings. So, they are all working hard, appreciated Councilmember Anduri's point that they do have an option they do not wish to pursue if they can pursue this other option. By the same token they will need to work very hard together and embarking upon the journey is time-consuming and costly for both parties. He said they will work diligently and whether they come back at the next meeting or the following meeting with a final agreement or not is not known, but they will do the best they can.

ACTION: Council directed staff to meet with LRP and provide an update at the next City Council meeting.

**8. STAFF REPORTS**

**A. Leah Greenblat, Transportation Planner**
**Request for Installing a Permanent, Radar, Speed Display Sign Facing Southbound at 711 South Glenside Drive**
Recommendation: Receive and File.

Transportation Planner Leah Greenblat said the Circulation Commission had considered a request to install a permanent radar speed display sign, they held a meeting and discussed the Traffic Engineers' recommendations. Historically the intersection area near Michael and Augustine Lanes has received a number of speeding complaints. The Commission's recommendation to install the sign was in recognition of this concern. It also reflects the Commission's understanding of limited traffic enforcement in the area and as part of the recommendation they had asked the new Police Chief to do additional enforcement. But, because of the nature of the road, it does not lend itself to traffic enforcement. Staff also implemented some other signage improvements in the area to further notice drivers of the curve condition. The City added some chevron signs above the existing guardrail which alerts drivers sooner to the curve. Due to the topography, the signs can be seen sooner than the just the guardrail.

The Commission is recommending installation of the sign and staff has prepared a cost estimate at $13,000, but are not sure it would be solar powered or electrically powered as there is concern with tree coverage and visual impacts of solar signs. Although this is not a project that falls within the traffic calming program, staff thought it was keeping with the idea of it, and therefore recommends the Council allocate $13,000 to install the speed radar sign.

Councilmember Tatzin said the staff report notes that as of its writing, staff has not heard back from the people's whose house is adjacent to the sign. Ms. Greenblat said an email was received and distributed which was in the packet. Mayor Federighi said she was concerned because it appears that the motion made by the Circulation Commission was that they approved the sign subject to sensitive placement and approval by adjacent property owners and the owner at 711 Glenside, and supported the recommendation. What the email states in the packet from Mr. Rynne indicates they were still opposed to the placement of a sign of a radar speed display sign at either the north or south side of their home at 711 Glenside. She felt the condition that the Circulation Commission imposed is not met.